

219.804-3

other means acceptable to the SBA district office—

(i) A copy of the signed purchase order; and

(ii) A notice stating that the purchase order is being processed under the PA. The notice also shall indicate that the 8(a) contractor will be deemed eligible for award and will automatically begin work under the purchase order unless, within 2 working days after SBA's receipt of the purchase order, the 8(a) contractor and the contracting officer are notified that the 8(a) contractor is ineligible for award.

(3) The notification to SBA shall identify any joint venture proposed for performance of the contract. SBA shall approve a joint venture before award of an 8(a) contract involving the joint venture.

(4) For competitive requirements for construction to be performed overseas, submit the notification to SBA Headquarters.

[67 FR 11437, Mar. 14, 2002, as amended at 67 FR 49256, July 30, 2002]

219.804-3 SBA acceptance.

For requirements processed under the PA cited in 219.800, SBA's acceptance is required within 5 working days (but see 219.804-2(2) for purchase orders that do not exceed the simplified acquisition threshold).

[63 FR 33587, June 19, 1998, as amended at 67 FR 11436, Mar. 14, 2002]

219.805 Competitive 8(a).

219.805-1 General.

(b)(2)(A) For acquisitions that exceed the competitive threshold and use fiscal year 2004 or 2005 appropriated funds, the SBA also may accept the requirement for a sole source 8(a) award on behalf of a small business concern owned by a Native Hawaiian Organization (Section 8021 of Pub. L. 108-87 and Section 8021 of Pub. L. 108-287).

(B) *Native Hawaiian Organization*, as used in this subsection and as defined by 15 U.S.C. 637(a)(15) and 13 CFR 124.3, means any community service organization serving Native Hawaiians in the State of Hawaii—

(1) That is a not-for-profit organization chartered by the State of Hawaii;

48 CFR Ch. 2 (10-1-05 Edition)

(2) That is controlled by Native Hawaiians; and

(3) Whose business activities will principally benefit such Native Hawaiians.

[70 FR 43073, July 26, 2005]

219.805-2 Procedures.

(c) For requirements processed under the PA cited in 219.800—

(i) For sealed bid and negotiated acquisitions, the SBA will determine the eligibility of the firms and will advise the contracting officer within 2 working days after its receipt of a request for an eligibility determination; and

(ii) For negotiated acquisitions, the contracting officer may submit a request for an eligibility determination on all firms in the competitive range if discussions are to be conducted, or on all firms with a realistic chance of award if no discussions are to be conducted.

[63 FR 33588, June 19, 1998, as amended at 67 FR 11436, Mar. 14, 2002]

219.806 Pricing the 8(a) contract.

For requirements processed under the PA cited in 219.800—

(1) The contracting officer shall obtain cost or pricing data from the 8(a) contractor, if required by FAR subpart 15.4; and

(2) SBA concurrence in the negotiated price is not required. However, except for purchase orders not exceeding the simplified acquisition threshold, the contracting officer shall notify the SBA prior to withdrawing a requirement from the 8(a) Program due to failure to agree on price or other terms and conditions.

[63 FR 33588, June 19, 1998, as amended at 67 FR 11437, Mar. 14, 2002; 67 FR 49256, July 30, 2002]

219.808 Contract negotiations.

219.808-1 Sole source.

For requirements processed under the PA cited in 219.800—

(1) The agency may negotiate directly with the 8(a) contractor. The contracting officer is responsible for initiating negotiations;

Department of Defense

219.1005

(2) The 8(a) contractor is responsible for negotiating within the time established by the contracting officer;

(3) If the 8(a) contractor does not negotiate within the established time and the agency cannot allow additional time, the contracting officer may, after notifying the SBA, proceed with the acquisition from other sources;

(4) If requested by the 8(a) contractor, the SBA may participate in negotiations; and

(5) SBA approval of the contract is not required.

[63 FR 33588, June 19, 1998, as amended at 67 FR 11437, Mar. 14, 2002]

219.811 Preparing the contracts.

219.811-1 Sole source.

(a) Awards under the PA cited in 219.800 may be made directly to the 8(a) contractor and, except as provided in paragraph (b) of this subsection and in 219.811-3, award documents shall be prepared in accordance with procedures established for non-8(a) contracts, using any otherwise authorized award forms. The "Issued by" block shall identify the awarding DoD contracting office. The contractor's name and address shall be that of the 8(a) participant.

(b) Use the following alternative procedures for direct awards made under the PA cited in 219.800:

(i) Cite 10 U.S.C. 2304(c)(5) as the authority for use of other than full and open competition;

(ii) Include the clause at 252.219-7009, which allows for direct award to the 8(a) contractor, and identify the cognizant SBA district office for the 8(a) contractor;

(iii) No SBA contract number is required; and

(iv) Do not require an SBA signature on the award document.

[63 FR 33588, June 19, 1998, as amended at 67 FR 11437, Mar. 14, 2002; 67 FR 49256, July 30, 2002]

219.811-2 Competitive.

Awards made under the PA cited in 219.800 shall be prepared in accordance with 219.811-1.

[63 FR 33588, June 19, 1998, as amended at 67 FR 11437, Mar. 14, 2002; 67 FR 49256, July 30, 2002]

219.811-3 Contract clauses.

(1) Use the clause at 252.219-7009, Section 8(a) Direct Award, instead of the clauses at FAR 52.219-11, Special 8(a) Contract Conditions, FAR 52.219-12, Special 8(a) Subcontract Conditions, and FAR 52.219-17, Section 8(a) Award, in solicitations and contracts processed in accordance with the PA cited in 219.800.

(2) Use the clause at FAR 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns, with 252.219-7010, Alternate A, in solicitations and contracts processed in accordance with the PA cited in 219.800.

(3) Use the clause at 252.219-7011, Notification to Delay Performance, in solicitations and purchase orders issued in accordance with 219.804-2(2).

[63 FR 33588, June 19, 1998, as amended at 67 FR 11437, Mar. 14, 2002]

219.812 Contract administration.

(d) Awards under the PA cited in 219.800 are subject to Section 407 of Pub. L. 100-656. These contracts include the clause at 252.219-7009, Section 8(a) Direct Award, which requires the 8(a) contractor to notify the SBA and the contracting officer when ownership of the firm is being transferred.

[63 FR 33588, June 19, 1998, as amended at 67 FR 11437, Mar. 14, 2002]

Subpart 219.10—Small Business Competitiveness Demonstration Program

219.1005 Applicability.

(a)(i) Architect-engineering services in support of military construction projects or military family housing projects are exempt from the Small Business Competitiveness Demonstration Program, except for the emerging small business (ESB) set-aside requirements. Accordingly, these shall—

(A) Be reviewed for possible award under the 8(a) Program regardless of dollar value.

(B) Not be set aside for small business if the estimated value is \$300,000 or more (including indefinite delivery-indefinite quantity contracts if the value of all anticipated orders exceeds \$300,000).